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OIL, GAS & MINING

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**BEFORE THE BOARD OF OIL, GAS, AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

<p>Genwal Resources, Inc.,</p> <p>Petitioner and Permittee,</p> <p>v.</p> <p>Utah Division of Oil, Gas & Mining,</p> <p>Respondent.</p>	<p>GENWAL'S SUPPLEMENTAL MEMORANDUM REGARDING AMENDED DIVISION ORDER DO-10A, CRANDALL CANYON MINE</p> <p>Docket No. 2010-026</p> <p>Cause No. C/015/0032</p>
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Genwal Resources, Inc., permittee of the Crandall Canyon Mine (“**Permittee**” or “**Genwal**”), Permit No. C/015/0032, submitted its brief in opposition to the perpetual bonding requirements imposed by the Division of Oil, Gas and Mining (the “**Division**”) in its Amended Division Order DO-10A (“**DO**” or “**Amended Order**”) on July 11, 2011. The Division responded on July 20, 2011. Genwal submits this Supplemental Memorandum for the sole purpose of advising the Board of two errors in the Division’s response.

The Division's response to Genwal's recent brief makes two factual errors. These errors, and the correct information, are set forth below without additional legal argument or analysis on Genwal's part.

I. **THE DIVISION ERRONEOUSLY CLAIMED THAT DO-10A DID NOT PROVIDE FOR TRUST FUNDS OR ANNUITIES LIKE THOSE AUTHORIZED IN TENNESSEE UNDER ALTERNATIVE BONDING AUTHORITY**

The Division sought to distance itself from the trust fund/annuity plan implemented in Tennessee as an alternative bonding system through rulemaking by claiming that "the DO-10A as originally written and amended does not provide for the use of "trust funds or annuities." Division's Response at 15 (July 20, 2011). The claim is false. The Division Order includes finding number 11(a) that the reclamation bond should be increased, going on to find that "[t]he bond will consist of a trust fund or other funding instrument, to be established immediately, which will yield a yearly payment sufficient to cover mine-water treatment costs in perpetuity." Division Order 10A at 3 (Aug. 16, 2010). Paragraph III of the Order required that Genwal "[p]rovide a bond or establish a trust fund or other funding instrument acceptable to the Division that will yield a yearly payment sufficient to cover mine-water treatment costs in perpetuity." *Id.* at 5. The Division previously advised the Board, in attempting to clarify the duration of the obligation it would impose on Genwal, that its use of the word "perpetuity" merely referred to the type of financial instrument it expected Genwal to provide, explaining in footnote 9 that "a perpetuity is an annuity . . ." and set forth the formula for calculating such an annuity. Division's Response to Genwal's Brief Regarding Identified Legal Questions at 5 (Dec. 1, 2010). Elsewhere in the same pleading, the Division indicated that it sought a "long-term" annuity to cover treatment costs, and included a "Present Value of Ordinary Annuity Table" as an exhibit to illustrate the cost of such an annuity. *Id.* at 7, Ex. 1. The Division in its initial and amended

Division Order has clearly demanded a trust fund or annuity, rather than a conventional surety, collateral, or self bond. The Division's latest response incorrectly characterizes the Division's Order and its subsequent litigation position.

II. THE DIVISION ERRONEOUSLY CLAIMED THAT GENWAL RAISED NEW ARGUMENTS IN ITS REPLY BRIEF

The Division asserts that Genwal first raised its objections to its failure to set a bond amount in a reply brief, unfairly prejudicing the Division and justifying the post-hearing legal arguments contained in its Response. Division's Response at 6. The claim is false. Prior to the January Board hearing Genwal devoted Section III of its opening brief to this argument. Pre-Hearing Brief Opposing Perpetual Bonding Requirements of Division Order 10A at 10-12 (Nov. 15, 2010). The Division did not address the argument in its December 1, 2010 Response.

CONCLUSION

Genwal stands by the arguments made in its previous pleadings, and respectfully requests that the Board take note of the Division's errors identified herein.

DATED this 26th day of July, 2011.

BY:


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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing **GENWAL'S SUPPLEMENTAL MEMORANDUM REGARDING AMENDED DIVISION ORDER DO-10A, CRANDALL CANYON MINE**, were delivered on July 26, 2011, to the following:

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